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**TIMOTHY H. VAN DYKE
BENCEN & VAN DYKE, P.A.
1630 HILLCREST STREET
ORLANDO, FLORIDA 32803**

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OFFICE OF PETITIONS

In re Application of
John R. Bianchi et al
Application No. 09/782,594
Filed: February 12, 2001
Attorney Docket No. RTI-112R

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:
: DECISION DISMISSING PETITION
: UNDER 37 CFR 1.78(a)(3)
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This is a decision on the petition under 37 CFR 1.78(a)(3), filed July 25, 2001, to accept an unintentionally delayed claim under 35 USC 120 for the benefit of two prior filed copending nonprovisional applications.

The petition is **DISMISSED**.

The petition under 37 CFR 1.78(a)(3) to accept an unintentionally delayed claim under 35 USC 120 for the benefit of one or more prior filed nonprovisional applications must be accompanied by: (1) The surcharge of \$1,240 set forth in 37 CFR 1.17(t); (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed was unintentional; and (3) the specification must contain or be amended to contain a reference to each prior filed copending nonprovisional application or be included in an application data sheet (ADS) (37 CFR 1.76). The Commissioner may require additional information where there is a question whether the delay was unintentional. This petition lacks item (3).

The instant pending application was filed on February 12, 2001, but the claim for priority to the two nonprovisional applications was not filed within the later of four months from the actual date of filing of the application or sixteen months from the filing date of the prior nonprovisional applications. Therefore, this is a proper petition under 37 CFR 1.78(a)(3).

The first line of the specification states:

This application is a continuation-in-part of pending provisional application serial number 60/181,622, filed February 10, 2000, pending, and of application serial numbers 09/191,132, filed on November 13, 1998, pending; and of 09/378,527, filed on August 20, 1999, pending; and of 09/370,194, filed on September 7, 1999, pending; 29/123, 227, filed May 12, 2000, pending, the priority of all of which is claimed herein under 35 U.S.C. Section 120.

The instant petition seeks to accept the unintentionally delayed claim for priority of nonprovisional Application No. 08/920,630, filed August 27, 1997 and nonprovisional Application No. 09/701,933, filed August 25, 1998.

A reference to the subject two prior nonprovisional applications has not been included in an ADS as provided by 37 CFR 1.76 or in the first sentence of the specification following the title as required by 37 CFR 1.78(a)(2). Therefore, the petition currently does not comply with the provisions of 37 CFR 1.78(a)(2) and, as such, cannot be accepted at this time.

The statement in the first line of the specification which states that "[t]his application is a continuation-in-part of pending provisional application serial number 60/181,622" is improper. In this regard, an application claiming the benefits of a provisional application under 35 USC 119(e) should not be called a continuation, a division, or a continuation-in-part. Note MPEP 201.07, 201.08 and 306.01. Additionally, it is noted that it appears that incorrect application numbers were included in the claim for priority under 35 USC 120 in the first sentence of the specification following the title; namely, "09/370,194" should read -- 09/390,194 -- and "09/191,132" should read -- 09/191,232 --. If this is correct, petitioner may wish to include this amendment with the request for reconsideration of the petition under 37 CFR 1.78(a)(3). It is further noted that the incorrect application numbers also appear in the executed declaration received May 25, 2001.

Any request for reconsideration of this decision should be filed within two months from the mail date of this decision. Note 37 CFR 1.181(f).

A further review of the file record discloses that the reply to the Notice to File Missing Parts (Notice) is defective in that the executed Declaration and Power of Attorney lacks the citizenship of inventors P. J. Gorham and Michael Esch as required by 35 USC 115. Therefore, a declaration in compliance with 35 USC 115 and 37 CFR 1.63(a)(3) is required. **The period for reply remains as set forth in the Notice of March 19, 2001. Failure to timely reply will result in the abandonment of this application. Note that extensions of time are still available pursuant to the provisions of 37 CFR 1.136(a) up to and including October 19, 2001.**

It is further noted that the preliminary amendment under 37 CFR 1.115 accompanying the instant petition is unsigned. Therefore, the amendment must be signed if petitioner desires to have the preliminary amendment considered.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By HAND: Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, Virginia 22202

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-8680.


Frances Hicks

Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy